



Budapest Convention, Second Additional Protocol

Data Protection Safeguards, Article 14

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Context/background

- Collection of information concerning individuals related to criminal offences (perpetrators, victims, witnesses, etc.) = **personal data**
- Most Parties have **legal requirements to protect** personal data, often as a human/fundamental right and with rules on intl data transfers
- Important from the perspective of the **protection of human rights**, but also because it **benefits effective law enforcement**
- **No absolute right**: restrictions possible, but must themselves be limited (proportionality principle)

Data protection safeguards - overview

- **Scope of application**, para 1
- **Substantive safeguards**, paras 2-12
- **Procedural safeguards**, paras 13-14
- **Suspension clause**, para 15

Data protection safeguards – scope of application

- **Relationship** between **Art 14** and possible **alternative arrangements**, in particular CoE Convention 108+
- **Legal effect** of applying Art 14 safeguards as regards domestic legal requirements for the transfer of personal data
- Possibility to ensure an even **higher level of protection** for the processing of data by a Party's own public authorities (including data obtained under Protocol)
- See also **Art 3(2)(d)** on the **definition of “personal data”**

Data protection safeguards – substantive safeguards

- **Principles:** purpose limitation, lawfulness, data minimisation, data quality, limited data retention
- **Obligations:** transparency, specific safeguards for sensitive data, data security/data breach notification, safeguards w/re fully automated (algorithmic) decisions
- **Individual rights:** access (including possible limitations), rectification (including erasure where appropriate and reasonable)
- **Onward sharing** (within Party) and **onward transfers** (with other country)

Data protection safeguards – procedural safeguards

- **Independent oversight**
- **Effective non-judicial + judicial redress**

Data protection safeguards - suspension

- Right of each Party to suspend data transfers to another Party in case of “**substantial evidence of a systematic or material breach**”
- Procedural requirements, in particular **prior consultation** (unless emergency)

Assessment of implementation, Art 23

- **General requirement** under the Convention/Protocol based on Art 46 of the Convention and Cybercrime Ctte RoP
- **Periodic assessment** of “**effective use and implementation**”
- **Specific requirement to review Art 14** once 10 Parties to the Convention have ratified

Important tool ensure data protection becomes reality “on the ground”
(complemented by capacity building, GLACY+)

Conclusion and Outlook

- Safeguards reflect **emerging global standard** and are **largely aligned with CoE Convention 108+**
- Could pave the way for increasing **convergence of the membership** between the **Budapest Convention/Protocol** and the **Convention 108+**
- Protocol establishes **data protection as a central element of law enforcement** (and cross-border law enforcement cooperation), for the Parties and beyond

Thank you



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